

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

TROY ALLEN BIRKES,

No. 03:10-CV-32-HU

Plaintiff,

ORDER

v.

DON MILLS, P. MAINE, T. O'MALLEY,
T. SWEET, R. GEER, S. BLACKETTER,
RICK COURSEY,

Defendants.

Troy Allen Birkes, Pro Se
69246-065
Federal Correctional Institution
Inmate Mail/Parcels
P.O. Box 5000
Sheridan, OR 97378

Attorney for Plaintiff

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Jacqueline Sadker Kamins
Samuel A. Kubernick
Department of Justice
1162 Court Street, NE
Salem, OR 97301

Attorneys for Defendants

HERNANDEZ, District Judge:

Magistrate Judge Hubel issued a Findings and Recommendation (#64) on September 28, 2011, in which he recommends that this Court grant Defendants' motion for summary judgment (#37) on the grounds that no constitutional violation has occurred in this case. Judge Hubel also recommended that this Court decline supplemental jurisdiction over the remaining state constitutional claim. The matter is now before me pursuant to 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b).

Because no objections to the Magistrate Judge's Findings and Recommendation were timely filed¹, I am relieved of my obligation to review the record *de novo*. United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc); see also United States v. Bernhardt, 840 F.2d 1441, 1444 (9th Cir. 1988) (*de novo* review required only for portions of Magistrate Judge's report to which objections have been made). Having reviewed the legal principles *de novo*, I find no error.

CONCLUSION

The Court adopts Magistrate Judge Hubel's Findings and Recommendation (#64). Accordingly, Defendants' motion for summary judgment (#37) is granted and this Court declines supplemental jurisdiction over the remaining state constitutional claim. Additionally, Plaintiff's motion to dismiss without prejudice (#77) is denied as moot in light of my adoption of the

¹ Plaintiff Birkes did not file any objections to the Findings and Recommendation, despite being granted a 45-day extension to file any objections. Dkt. #76.

Findings and Recommendation. Any appeal of this dismissal would not be taken in good faith.

28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3).

IT IS SO ORDERED.

DATED this 19th day of March, 2012.

/s/ Marco A. Hernandez
MARCO A. HERNANDEZ
United States District Judge